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## **Strengthen Texas's Election Integrity by Ensuring Accuracy**

*Testimony Before the Texas House Elections Committee*

Chair Klick and Members of the Committee:

My name is Francisco “Quico” Canseco, and I am director of the Election Protection Project at the Texas Public Policy Foundation in addition to being a former member of Congress representing the 23rd Congressional District during the 112th Congress. I am [submitting testimony](#) today for policy issues addressed by the committee under interim charges 2 and 3. Amid the presidential election year as well as the COVID-19 pandemic, our state is facing an existential threat in the rush to mail-in voting with mere days before voters would cast a ballot. Inaccurate voter rolls, a misinformed rush to vote by mail and efforts to undermine election security would be well addressed by legislative reforms considered in those charges by this committee.

**The Texas Public Policy Foundation’s Election Protection Project’s Secure and Free Elections (SAFE) agenda aims to protect every citizen’s basic right to vote from intentional fraud and inefficient bureaucracy.** The policies below would ensure that voters understand their rights and the rules of voting, notably that they should be free to choose whom they vote for, and that the voting system should preserve the integrity of each ballot.

Recommendations cover 5 key points:

1. Require all voters for all offices to be United States citizens by requiring proof of citizenship at voter registration and aligning registration identification requirements with accepted identification for voting in person, with the provision a voter can submit a reasonable impediment declaration. Such standards should also apply to vote by mail or applications for ballot by mail.
2. Remove all non-voters from voter-registration lists after a set number of missed cycles, following a given notification period. This can be accomplished by address and status verification conducted by counties or the Secretary of State to ensure accurate and up-to-date rolls.
3. Improve Texas’s vote-by-mail system by conducting all operations within the office of the Texas Secretary of State, including all applications, counting and storage for ballots by mail, and strengthen qualifications, such as implementing a defined disability-verification process.
4. Strengthen coordination between the Texas Secretary of State’s elections division and Texas counties through measures such as standardized voter-registration information and communication. Specifically:
  - a. Require the Texas Secretary of State to establish and administer a standardized system for voter-registration information and communication.
  - b. Require all Texas counties to adhere to the minimum standards for voter-registration information and communication set by the Texas Secretary of State.
  - c. Require all Texas counties to exchange voter-registration information and to modify their own voter-registration lists, on the demand of the Texas Secretary of State.
  - d. Require the Texas Secretary of State to perform a full audit of all county voter-registration lists every 5 years.
  - e. Require all Texas counties who fail to pass the 5-year audit, and/or fail to adhere to the minimum standards set for voter-registration information and communication—at the assessment and discretion of the Texas Secretary of State—to have their elections and voter-registration operations wholly run and supervised by the Texas Secretary of State for a 5-year period. The model employed by the Texas education commissioner to manage school districts that do not fully comply with state criteria could be replicated by the Secretary of State’s office. Whereby, the Secretary of State manages or monitors counties that fail in certain election administration criteria including adequate maintenance of voter rolls, registration standards, requests for mail-in ballots, identification verification, data sharing, etc.

5. Increase criminal penalties for persons committing voter-assistance fraud, and prohibit certain persons from soliciting, intimidating, or coercing voters by providing “voter assistance.”

**Interim charge 2, which requires the Secretary of State to develop procedures and make recommendations for establishing best practices for conducting an election during a declared disaster should also be expanded to address structural issues in the system during normal elections** but at minimum should consider the same recommendations in the current situation. We suggest specifically working on policy related to registration, voter rolls, and identification standards for both mail and in-person voting.

**Interim charge 3** would assist in this process requiring the secretary to “Evaluate election laws with the purpose of strengthening voter integrity and fair elections,” and “Perform an in-depth study of the voter registration processes and explore whether centralizing voter registration would be more effective than today's processes.”

Current mail-in ballot, registration, and verification processes have loopholes that have been exploited by bad actors leading to Texas citizens being disenfranchised. The study and solutions pursued by this committee and the Secretary of State should seek to expand the protections enabled in SB 9 from 2018 to standardize citizenship and identification requirements using the accepted list of 7 forms of ID plus a reasonable impediment declaration form from registration for voting, whether in person or by mail. Further, lessons learned in the flawed attempt in 2019 to clean voter rolls should be considered to ensure accurate and timely review of voter rolls post-election to ensure that all legitimate voters ballots count.

**Evidence shows Texas voters have been increasingly using mail-in ballots well prior to the current pandemic.** Absentee votes totaled 0.9% of votes in 2006 and then rose steadily to 6.3% in the 2018 general election and tracked roughly the same in the March 3, 2020, primary with 6.4% of Democratic voters using mail-in ballots, while Republicans cast 5.4% of the vote by mail.

Voting by mail, while sometimes convenient for the voter, lacks the protections that voting in person provides. The ballot can get lost in the mail. The mail-in ballot application can be completed by others, sometimes with false information. When they arrive in the mail, ballots can be intercepted by political operators. Mail-in ballots can be sent to people who have died or moved away. And, in some cases, large-scale fraud can take place where, through nominal gifts of food or alcohol, voter intimidation, or deception, a professional ballot harvester can simply substitute his vote for the voter's and turn in the ballot. Lastly, a mail-in ballot is subject to being invalidated by election personnel during the vote tabulation process.

**Texas asks voters to show identification when they show up to vote. But voting by mail requires no such check.** Further, Texas election officials cannot question a voter who claims a disability to vote by mail. But law enforcement can pursue charges against those who lie on the vote by mail application, whether they are illegal ballot harvesters or individual voters.

In many instances though, county district attorneys lack either the resources or the will to prosecute election fraud. Thus, the Office of the Attorney General must pursue charges against those who would attempt to win an election by cheating.

In the 2017 special session of the Texas Legislature, lawmakers were concerned enough by illegal ballot harvesting that they passed [SB 5](#). The law, in effect for the 2018 and subsequent election cycles, tightened mail-in ballot rules and increased criminal penalties for ballot fraud.

But a statistical analysis of the 2018 general election suggests that an unusually large share of mail-in votes were cast by young adults who voted from their home address, meaning they, or a third party, checked the “disability” box in their mail-in ballot request. The enhanced penalties passed in 2017 may not be serving as a deterrent.

During the increased national discussion about mail-in balloting in 2020, advocates asserted that mail-in balloting was safe and secure and free of fraud. However, at the same time these claims were being made, there were numerous stories around the nation indicating otherwise:

- In 2018, in Harris County, Texas, allegations were reported of the illegal harvesting of 400 votes at convalescent homes (under [investigation](#) by the Texas attorney general as of June 2020).
- In 2018, in Starr County, Texas, a large number of mail-in ballot applications by people under 65 with the disability box checked were found, with ballot harvesters later arrested and accused of falsely checking the disability box on voters who were not disabled and without their knowledge.
- In 2017, in [Edinburg, Texas](#), a vote-harvesting scheme occurred in a municipal election, involving voters registering at an apartment complex owned by a candidate for mayor. Trial was pending as of June 2020.
- In 2016, in Ellis County and Weslaco, Texas, three people were convicted of manufacturing 36 mail-in ballots.

Relative to interim charges 2 and 3 addressing voter registration and identification requirements, legislators and the Texas Secretary of State should bear in mind the following:

**Post 1993 National Voter Registration Act (also known as the Motor Voter Act), fear of lawsuits and an attitude of disregard toward voter fraud have made it more difficult for states to ensure voter lists are accurate.** Absent accurate voter registration lists, the reliability and integrity of election outcomes can be substantially affected.

The Texas Secretary of State does not perform regular audits of voter lists, and there is no system of automatic removal from the rolls of nonvoters with a given notification period in Texas, opening the door to voter fraud. Subsequently, false registrations of noncitizens as voters continue to affect our election system while remaining undiscovered or not prosecuted. No verification and cleaning of voter lists allow for duplicate voting and fraudulent voters claiming multiple addresses for certain elections to illicitly vote multiple times. This also enables people to vote in the name of someone who is deceased through mail-in ballots or by stealing their identity to vote.

Close results in Texas state and local elections make the influence of fraudulent voters especially problematic, and several elections have been overturned because of fraudulent voting.

During the 85th regular legislative session, HB 4034 was passed to require the Secretary of State to periodically check voter rolls for duplicate registrations. During the 84th Legislature, SB 795 was passed to increase cooperation between the Secretary of State and local authorities to compare voter lists and information. However, there is still no explicit requirement for audits to occur in a specified time to remove ineligible voters and improper registrations. The state is prohibited from removing nonqualified voters from the rolls in many cases and removal purely for failure to vote cannot be done.

**In 2019, an attempt to review Texas's voter rolls resulted in significant difficulties due to inaccuracies and out-of-date records derived from the Texas Department of Public Safety.** The issues raised here illustrate a need for comprehensive review to ensure records are up to date and county and state officials use standard and coordinated databases to ensure noncitizens, ineligible felons, out-of-state voters, and the deceased are removed from voter rolls in a timely and routine manner. There is also the need to protect against illicit voter registrations by noncitizen or nonqualified voters.

#### **Evidence is substantive:**

- [Research](#) by Judicial Watch showed that 462 United States counties had higher voter registrations than the population of citizens over 18 in those counties, accounting for about 17% of U.S. counties. Fifteen of those counties had higher voter registrations than their actual populations. It indicates that too many counties have failed to send confirmation notices to confirm voters reside at their listed address, threatening the integrity of our national elections.

- A [study](#) by the Government Accountability Institute found a likely 1,200 intra-state duplicate voters and a highly likely 7,271 inter-state duplicate voters, extrapolating an estimated 45,000 duplicate votes in the 2016 election. The results provide evidence that certain people are registered but not living in the multiple jurisdictions they are voting in.
- [The Pew Center on the States reported](#) that, in 2012, across the United States, more than 1.8 million deceased persons were still on voter lists.
- A judge who died in 2010 in Starr County, Texas, has had someone vote in his name three times since.
- A man cast a duplicate vote via mail-in ballots in Minnesota and Texas for the 2012 election and [was only caught by a reported Facebook](#) post where he admitted his actions.
- [In 2018 in Harris County, the Texas Office of the Attorney General prosecuted](#) a Mexican national who stole the identity of an American citizen and used the identity to register to vote. The individual voted in several elections, including the 2016 general election.
- A Salvadoran national who illegally entered the United States [falsely registered to vote](#) in Texas while not being a citizen and cast a ballot in the 2016 election.

**Voter fraud, intimidation, and abuse can take multiple forms. Mail-in ballots are especially vulnerable due to a broken chain of custody and lack of in-person supervision present in a polling station.** Yet, in-person voting can also be susceptible to intimidation and influence or to paid actors collecting voters and instructing them how to vote for compensation, as well as collecting or “harvesting” ballots. Both in-person voting and vote by mail can be exploited by unscrupulous candidates and tend to be given little credence as a problem that needs sufficient legal sanctions to address. The resources dedicated to protecting voting should be adequately provisioned within the state and should give the Office of the Attorney General and the Texas Secretary of State tools to enforce proper sanctions against the organizations and people who benefit from illegal actions.

Inaccurate rolls containing deceased voters, noncitizens, felons, and old registrations give illegal actors opportunities to exploit applications for ballot by mail or mail-in ballots. Ballot interception or identity theft should be addressed by an appropriate level of criminal penalty that considers *mens rea* as well as the organizer or wholesale organizers of voter fraud, ballot harvesting, or voter information fraud while offering consideration for the voter who may, in fact, be a victim. Similarly, those who deliberately seek to intimidate or misinform voters should be held to appropriate criminal penalties.

Several bills in the Texas 84th, 85th, and 86th legislatures sought to create enhanced penalties for the abuse of mail-in ballots and old registrations. In the special session of the 85th Legislature, SB 5 increased penalties for mail-in ballot fraud and vote harvesting. Yet, vote harvesters and mail-in ballot fraud have continued to affect Texas elections. The need to increase criminal penalties for vote harvesters is becoming more apparent.

Section 64.012 of the Texas Election Code defines illegal voting. A person commits an offense if the person:

- Votes or attempts to vote in an election in which the person knows the person is not eligible to vote.
- Knowingly votes or attempts to vote more than once in an election.
- Knowingly votes or attempts to vote with a ballot belonging to another person, or by impersonating another person; or
- Knowingly marks or attempts to mark any portion of another person’s ballot without the consent of that person, or without specific direction from that person as to how to mark the ballot.

An offense under this section is a felony of the second degree unless the person is convicted of an attempt. In that case, the offense is a state jail felony.

News reports, vote fraud prosecutions, and the Foundation’s data suggest that illegal voting, false registrations from noncitizens voting, and the threat from mail-in ballots are present threats and create significant problems for our elections:

- During the COVID-19 pandemic, Harris County [decided to mail](#) an absentee ballot to every voter 65 or over regardless of their voting intentions, leaving ballots open to the possibility of interception or accidental duplicate voting. Subsequently, Harris County has confused voters by [attempting to mail applications](#) for ballot by mail to all registered voters and has been censured by both the [attorney general](#) as well as being publicly opposed by the [Secretary of State's office](#).
- Texas Attorney General Ken Paxton warned that fear of the coronavirus is not a valid reason to claim a disability for the mail-in ballot, [while Travis County saw a 1700% increase](#) in requests for mail-in ballots for the July 2020 run-off elections.
- Assistant Attorney General Jonathan White [explained](#) that mail-in ballot fraud is still a very real problem with regards to election fraud despite past legislation helping to make conditions better.
- In [Mission, Texas, in 2018](#), a mayoral campaign was prosecuted for bribery, absentee ballot harvesting, and manipulation, and the election was declared void.
- Research by [Old Dominion University](#) has suggested that noncitizens participate in U.S. elections, and that this participation has been large enough to change meaningful election outcomes including Electoral College votes and congressional elections.

## ***Conclusion***

Proper process with adequate security serves to protect all voters. Simply, it should be easy to vote but difficult to cheat and the above policy reforms would significantly strengthen the Secretary of State's and county officials' abilities to protect the integrity of our elections while ensuring that all legitimate votes are counted. Voters need not choose between health and civic duty, even during our current situation related to the COVID-19 outbreak as long as officials follow CDC and state guidance and provide personal protective equipment (PPE), address early voting expansion as the governor has done, and properly instruct counties on the tools available to conduct safe, and accurate elections with voters able to cast a ballot in person, or if eligible, by mail.